IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL UNDER SECTION 109 No 5 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

M/S.MRF LIMITED

Versus

M/S.RADIANT BEARINGS PVT.LTD.

Appearance:
MR GN SHAH with Mr. BJ SHETH for Petitioner
MR JR NANAVATI for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA.
Date of decision: 18/06/98

ORAL JUDGEMENT

1. Heard learned counsel for the appellant. This Appeal is against the order of the Assistant Registrar of Trade Marks dated 27th November, 1991 and dated 5th March, 1992. Respondent No.1 had made an application for registration of trade mark under the Trade and Merchandise Marks Act, 1958 in 1983. Appellant has given

notice in prescribed manner to the Registrar of opposition to the registration of mark claimed by the respondent. After receipt of the counter statement as required under Rule 52 of the Trade and Merchandise Marks Rules, 1959, the Appellant was required to act under Rule 53 within two months from the service on him of a copy of the counter statement either by way of leaving with the Registrar such evidence by way of affidavit as he may desire to addue in support of his opposition or were to intimate the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. This applicant was required to do by 2nd May 1991. In spite of granting time upto 6th November,1991, when the appellant failed to deliver the evidence which the appellant desire to adduce in support of his opposition or failed to intimate to the Registrar about his desire not to adduce evidence in support of his opposition but to rely on facts stated in the affidavit of opposition, the Assistant Registrar vide order dated 27th November, 1991, made an order in confirmity with sub-rule (2) of Rule 53 which provides that the opponent fails to take action under sub-rule (1) within the time prescribed, he shall, unless the Registrar otherwise directs, be deemed to have abandoned his opposition. Thus, the order of deemed abandonment of the opposition was made on 27th November, 1991. The appellant applied for review of the order, which application was dismissed on 5th March, 1992. The Assistant Registrar was of the view that the appellant has failed to make out any ground for review as envisaged under order 47 Rule 1 of the Civil Procedure Code which according to the appellant also governed the exercise of jurisdiction of reviewing the order passed by the authority under the Act. On merit also it held that order does not deserve to be reviewed.

2. In the aforesaid facts and circumstances, the appeal has been preferred by the appellant for setting aside the aforesaid two orders and allowing him how to take action in pursuance of Rule 53.

3. In the first instance, the learned counsel for the appellant urged that provision of Rule 53(2) are not mandatory but directory in their operation and Assistant Registrar has erred in treating the provision to be mandatory in not exercising its discretion in the matter. However, when it was pointed out by the learned counsel for the appellant from the order of review that the Assistant Registrar has not acted under sub-rule (2) of Rule 53 on the anvil that he has no power either to grant

further time for adducing evidence or that he has no jurisdiction to review, but he has not thought fit to exercise that discretion in favour of the appellant on merit. The point was not pursued further.

4. It was next urged that once it is assumed in favour of existence of discretion vesting with the authority to extend the period for adducing evidence under Rule 53(1), the Assistant Registrar has not exercised its discretion in judicious manner and acted mechanically in invoking the provision of sub-rule(2). I am of the opinion, this contention is also not well founded as is apparent from the facts noticed above. The application was filed some where in 1983 for registration of trade mark by the respondent. As per the order the first date of which evidence of opponent was required to be led with the Registrar and delivered to the applicant by the opponent appellant was 2nd May 1991. The appellant has not availed that opportunity in the first place. He has been granted time upto 6th November, 1991 still when the opponent appellant failed to avail that opportunity to lead the evidence as required under Rule 53(1) or to inform the Registrar and the applicant about his intention not to lead any evidence but to rely on the facts stated in notice of opposition. Then keeping in view the long pendency of the application and time already granted to the opponent for the purpose of taking action under Rule 53(1), the order of due abandonment of the opposition has made on 27th November, 1991 only. This clearly goes to show that Assistant Registrar has not mechanically deemed abandonment of opposition on expiry of two months by treating the period prescribed under Rule 53(1) as mandatory. In this circumstances, I am of the opinion that the learned Assistant Registrar was otherwise justified in holding that there was no ground for exercise of power of review was made out and order on merit was also justified.

5. Apart from the above, learned counsel for the respondent informs that since the making of impugned orders, registration of the disputed trade mark has been granted in favour of the applicant respondent and the same has not been challenged so far by the appellant and in that view of the matter also the order under appeal does not require interference.

6. The appeal, therefore, fails and is hereby

dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

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